

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP(KAT).No. 141 of 2015 (Z)

AGAINST THE ORDER IN OA 615/2015 OF KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 09.04.2015

PETITIONER(S) :

ALPHONSA V., AGED 51 YEARS
W/O.V.T.MATHEW,
HIGHER SECONDARY SCHOOL TEACHER (ENGLISH)
GOVERNMENT HIGHER SECONDARY SCHOOL, PULLENGODE
MALAPPURAM, RESIDING AT EF4/10-4511, KSHB
BILATHIKULAM, ERANCHIPPALAM, KOZHIKODE DISTRICT
KOZHIKODE, KERALA - 6730 06.

BY ADV. SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. DEPUTY DIRECTOR OF EDUCATION
OFFICE OF THE DEPUTY DIRECTOR, KOZHIKODE - 673 001
KERALA.

3. THE HEADMISTRESS
GOVERNMENT VOCATIONAL HIGHER SECONDARY SCHOOL,
NADAKKAVU, KOZHIKODE - 673 001, KERALA.

4. ACCOUNTANT GENERAL (A & E)
OFFICE OF THE ACCOUNTANT GENERAL, THIRUVANANTHAPURAM
KERALA - 695 039.

BY GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT P1 THE TRUE COPY OF THE O.A.NO.615 OF 2015 WITH ITS
ANNEXURES.

EXHIBIT P2 THE TRUE COPY OF THE ORDER IN O.A. NO.615 OF 2015
DATED 9.4.2015

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

Pn

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

O.P. (KAT) No. 141 of 2015

Dated this the 22nd day of May, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Interference is declined by the Kerala Administrative Tribunal for issuance of the 'Last Pay Certificate' (LPC), so as to enable the petitioner to obtain the salary which is now pending for nearly 7 months, despite passing Annexure A6 order dated 16.12.2014 by the 2nd respondent, regularising the period of suspension already ordered, forms the subject matter of challenge in the present proceedings.

2. The petitioner herein was working as an HSA (English) under the 3rd respondent. While so, by virtue of her credentials to have promotion to the post of HSST, by way of 'by-transfer appointment' in respect of 25% vacancies as per the relevant provisions of law, she came to be appointed as an HSST and joined the Government Higher Secondary School, Pullengode, Malappuram. The said promotion was given as per Annexure A2 dated 25.09.2014 ordered by the Director of Higher Secondary

Education. However, according to the petitioner, because of some ill will against the petitioner, at the instance of the parties who were acting behind the curtain, Annexure A3 order was issued by the 2nd respondent on the very same day ie; on 25.09.2014, suspending the petitioner pending enquiry, in connection with some alleged misconduct. Being aggrieved of the said order, the petitioner approached the DPI by filing an appeal. After considering the merits involved, the impugned order was set aside and the petitioner was ordered to be reinstated.

3. Pursuant to said order, the 2nd respondent issued Annexure A4 order dated 05.11.2014 and the petitioner was directed to report in the Government Higher Secondary School, Naduvanur. In furtherance to the said proceedings, the petitioner was relieved from the concerned School on 06.11.2014 and joined in the School mentioned in Annexure A4 on 7.11.2014 ie; the next day as evident from Annexure A5. After joining duty as aforesaid, the petitioner submitted a representation before the 2nd respondent for causing regularisation of the period of suspension of nearly 40 days. The matter was considered and the 2nd

respondent was pleased to pass Annexure A6 order on 16.12.2014, whereby the period of suspension was ordered to be treated as 'eligible leave'. Appropriate directions were issued to the 3rd respondent to take necessary steps to sanction the leave and to submit a report, also ordering to make necessary entries in the 'Service Book'. Pursuant to the said order, the petitioner filed Annexure A7 application for commuted leave, as there was sufficient commuted leave to her credit; but the same was not acted upon.

4. By virtue of the fact that the petitioner was promoted to the post of HSST from the post of HSA (English) and since the former post is a gazetted post, 'LPC' was necessary to facilitate disbursement of salary. On enquiry, the petitioner was given to understand that 'LPC' was issued by the 3rd respondent only as on 24.09.2014 ie; on the previous date of suspension ordered on 25.09.2014. As a matter of fact, by virtue of regularisation of the period of suspension as per Annexure A6 order, 'LPC' ought to have been issued as on date and the laxity on the part of the 3rd respondent reflects only scant regards to the order passed by the higher authorities. For no reason, the petitioner is made to suffer

quite a lot, as salary for more than several months is still to be disbursed and the members of her family are virtually starving. This made the petitioner to approach the KAT by filing the O.A. for appropriate relief. But observing that the petitioner had directly approached the KAT before projecting her grievance in front of the higher authorities, interference was declined with reference to Section 20(1) of The Administrative Tribunals Act, 1985, which in turn is under challenge in this Original Petition.

5. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing on behalf of the respondents.

6. Section 20(1) of *The Administrative Tribunals Act, 1985* act reads as follows:

“20. Applications not to be admitted unless other remedies exhausted.-

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.”

There is no disputed question as to the factual sequence. It remains a fact that suspension of the petitioner ordered on 25.09.2014 stands revoked and the period of suspension has

been ordered to be regularised. As such, the petitioner is entitled to get the 'LPC', for enabling her to draw salary in the promoted post, after regularisation of the period of suspension. The only question is whether the petitioner has moved the KAT without exhausting the remedy before the concerned authorities and if the observation made by the Tribunal in this regard, is sustainable with reference to the mandate of Section 20(1) of the Administrative Tribunals Act.

7. The expression used under Section 20(1) is that interference shall not “**ordinarily**” be made by the Tribunal, which by itself shows that, under exceptional circumstances, if sufficient reasons are shown, it is always possible for the aggrieved party to move the Tribunal directly. Even otherwise, coming to the factual position, it is seen that, the petitioner had moved the concerned authority for getting the period of suspension regularised. It was based on the application/representation preferred by the petitioner as aforesaid, that the 2nd respondent passed Annexure A6 order on 16.12.2014, giving appropriate direction to the Headmaster. The question is whether the Headmaster has complied with the

direction or not. Admittedly, the same is still to be complied with. If there is an order passed by the higher authority and the same is not given effect to by the lower authority, *prima facie*, there may be a circumstance leading to non-discharge of the statutory duty vested upon the concerned officer. Whether there is any justification on the part of the concerned officer for not giving effect to the order of the higher authority, or whether there is any misconduct/delinquency is a matter to be looked into by the concerned authority at higher level. If there is any misconduct, whether any action is to be taken against the concerned/delinquent official, is of course a matter within the prerogative of the higher authority/employer. But this is not the actual relief that is sought for by the petitioner, who is desirous of getting the arrears of salary on regularisation of the period of suspension, and is starving for more than seven months. The point which ought to have been looked into was whether there was any justification in not giving the 'LPC' as on date after regularising the period of suspension ordered as per Annexure A6 and whether the petitioner was entitled to have the relief sought for in this regard. This Court finds that, the non-suiting of the

petitioner by the Tribunal with reference to Section 20(1) is not correct or sustainable and the same requires to be set aside. It is ordered accordingly.

8. During the course of hearing, the learned Government Pleader appearing for the respondents submits that, the 3rd respondent was not in a position to give effect to the order for want of 'Service Book' wherein necessary entries are ordered to be effected as per Annexure A6. It is stated that the 'Service Book' of the petitioner has been taken away by the Vigilance Department in connection with some allegation of misappropriation, when the petitioner was holding the charge as the official dealing with the 'NCC' of the concerned School. What is the connection between the entries in the 'Service Book' and the offence allegedly involved in connection with the proceedings before the Vigilance Court, is not satisfactorily explained. However, we do not intend to express any opinion in this regard. If at all any correction is to be made in the 'Service Book' pursuant to Annexure A6 order, which is only consequential, it is for the concerned officers of the department to get back the 'Service Book' and to effect the necessary entries, which shall in

no way stand against the petitioner in her attempt to draw the salary for the work she has already done.

9. In the above circumstance, the concerned respondent is directed to take all necessary steps to give effect to Annexure A6 order and issue 'LPC' to the petitioner forthwith; so as to enable her to obtain salary in the promoted post of HSST in the concerned School. Necessary steps shall be taken by the concerned respondent to get back the 'Service Book' so as to incorporate necessary entries and return the same. The proceedings as above shall be finalised, at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment.

The Original Petition stands allowed. No cost.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

Sd/-

BABU MATHEW P. JOSEPH, JUDGE.